IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5294 OF 2005

Maruti Bapu Jadhav & Ors. .. Petitioners.
Vs.
Maruti Krishna Kumbhar .. Respondent.

Smt.Shakuntala A.Mudbidri for the petitioners.
Mr.M.R.Suryawanshi for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 22ND AUGUST, 2006

P.C.:

. Heard learned counsel for the petitioners and the respondent.

2. This petition is directed against the order dated 28.2.2005 passed on the application at Exhibit-35/D. The said application was filed by the petitioners for framing the following issue:

> "Do defendants prove that the defendant's predecessor's in title was the tenant of the suit land ?"

3. It is the case of the petitioners-defendants that one Kedari Patil and Bhau Rama Jadhav were tenants of one Pandurang Sasne much before the tiller's day. On 4.3.1953, both purchased the lands in their possession as the tenants by registered sale deed. Both were in possession of 1/2 share each. In the written statement the petitioners have stated that Bhau Rama was cultivating the land of Kedari also before they purchased the land on 4.3.1953 and he

continued to cultivate the said land even after the said sale deed. I perused the written statement and in particular paragraph 12 thereof. I am unable to read the said paragraph to mean, as contended by the learned counsel for the petitioners, that the petitioners, who are claiming right in the property through Bhau Rama Jadhav, were inducated as the tenants by Kedari Patil in respect of 1/2 share purchased by him vide registered sale deed dated 4.3.1953. The petitioners have not so stated in the written statement that Bhau Rama, after 4.3.1953, was inducted as tenant by Kedari or was cultivating his (Kedari's) share as his tenant. Moreover, except the averments in paragraph 12, the petitioner has not produced a single document in support of their claim. The VII-XII extracts produced for my perusal show that the names of Kedari and Bhau Rama together was continued for sometime on record. That, however, does not support the claim of the petitioner. The petitioner and Kedari became owners of the tenanted land on 4.3.1953. The learned Judge has considered the case in proper prespective and recorded the following reasons in paragraph 5 of his order which read thus:

> "5. I have carefully gone through the pleadings. The plaintiff has filed this suit for partition and separate possession. It is their case that on 4.3.1953 original owner Pandurang Sasne has sold out the suit property to Kedari Patil and Bhau Jadhav. The present plaintiff has purchased the share of Kedari

> Patil and sale-deed was executed on 12.2.1997. Hence, on that basis the present plaintiffs have filed this suit for partition and separate possession. The defendant has filed their written statement at Exhibit 15, in which in para No.12 the defendant has raised a plea of tenancy in the suit land. In para 12 it is mentioned that Bhau Rama Jadhav was protected tenant in the suit property (Original survey Nos.88 and 89). Thereafter, the entire land has been purchased by Bhau Ramji Jadhav and Kedari Patil. I have carefully gone through the registered sale deed dated 4.3.1953 produced at Exhibit 34/2. In the registered sale deed there is nothing mentioned about tenancy rights of Bhau Jadhav, Shri Bhosale, learned counsel for planitiff has rightly pointed out that after acquisition of the ownership there is no question of continuation of tenancy rights. After execution of the registered sale deed dated 4.3.1953 said Bhau Jadhav and Kedari Patil became the owners of the land purchased by them. There is no prima facie evidence produced by the defendant showing that there was any contract of tenancy between Bhau Jadhav and Kedari Patil. Moreover, there is no documentary evidence to show that whether the defendant has taken any steps to get execute or get the land as per the provisions under the Bombay Tenancy and Agricultural Lands Act, 1948 because after execution of the sale deed the tillers day has arrive. All these circumstances support to the case of plaintiff. The defendant alleging himself as a tenant, but during this huge period he has not issued any notice to Kedari Patil or even to the present plaintiff. In these circumstances, I come to the conclusion that after acquisition of the ownership the right of tenancy comes to an end and there is no need to frame the specific issue and to raise it to the proper court for its finding. Hence, I answer point No.1 in the negative and proceed to pass the following order."

4. In the circumstances I see no reason to exercise the writ jurisdiction under Article 227 of the Constitution and interfere with well considered and well reasoned order. The writ petition is,

accordingly, dismissed.

(D.B.Bhosale, J.)